

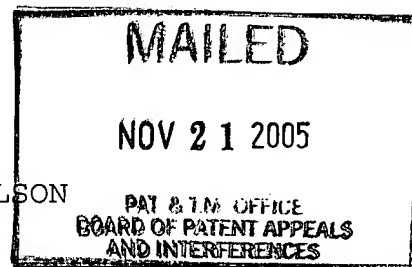
THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was **not** written for publication in a law journal and (2) is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARY LEE BATES, ERIC JOHN NELSON
and JOHN MATTHEW SANTOSUOSSO



Application No. 09/633,766

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on October 18, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

Upon review of the Examiner's Answer mailed May 6, 2005, it appears that the section "Status of Amendment After Final" is missing from the Examiner Answer. According to the Manual of Patent Examining Procedure (MPEP) § 1208 (8th ed., August 2001), ¶ 12.57. Appropriate correction is required. Also, on page 8, it appears that no appeal conference has been conducted. According to the Manual of Patent Examining Procedure (MPEP) § 1208 (8th ed., August

2001), when an appeal conference has been held, the appeal conference participants, including the examiner charged with the preparation of the Examiner's Answer, must identify themselves as the conferees, along with placing their initials next to their name. This procedure has not been completely followed, thus raising the question of whether or not an appeal conference was held.


Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) submit a new Examiner's Answer which includes the missing section as required by MPEP § 1208, ¶ 12.57;
- 2) taking corrective action regarding the appeal conference, written notification of the action taken, and for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____


CRAIG FEINBERG
Program and Resource Administrator
571-272-9797

CF/dal

MARTIN & Associates, LLC
IBM Intellectual Property Law Dept.
Department 917, Building 006-1
3605 Highway 52 North
Rochester, MN 55901-7829